

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| <b>RICKKE LEON GREEN,</b>     | ) |                             |
|                               | ) |                             |
| <b>Petitioner,</b>            | ) |                             |
|                               | ) |                             |
| <b>vs.</b>                    | ) | <b>Case No. CIV-06-62-L</b> |
|                               | ) |                             |
| <b>JOHN WHETSEL, Sheriff,</b> | ) |                             |
|                               | ) |                             |
| <b>Respondent.</b>            | ) |                             |

**REPORT AND RECOMMENDATION**

Petitioner, a prisoner appearing pro se, has filed this action pursuant to 28 U.S.C. § 2254, seeking a writ of habeas corpus. United States District Judge Tim Leonard has referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B). In accordance with that referral, the undersigned entered an order on January 20, 2006, noting that the Court had received the petition for writ of habeas corpus, but that the Petitioner had neither paid the \$5.00 filing fee nor submitted an application to proceed *in forma pauperis*. Accordingly, the Court directed him to either pay the required filing fee or submit a completed *in forma pauperis* application on or before February 9, 2006. On February 15, 2006, the undersigned *sua sponte* extended Petitioner's deadline to either pay or file his application to proceed *in forma pauperis* until March 7, 2006. The Petitioner was also informed that failure to comply with the Order by the date set forth above could result in dismissal of the action without prejudice to refiling and without further notice. See Local Civil Rule 3.3; 3.5.

As of this date, the Petitioner has neither complied with the Order, sought an extension of time in which to do so, nor has he attempted to show cause for his failure.

Therefore, the undersigned recommends that the petition for a writ of habeas corpus be dismissed without prejudice to refiling.

RECOMMENDATION

Accordingly, the undersigned recommends that the petition for a writ of habeas corpus be dismissed without prejudice to refiling due to Petitioner's failure to either pay the required filing fee or to submit a completed *in forma pauperis* application. The Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by April 6, 2005, in accordance with 28 U.S.C. §636 and Local Civil Rule 72.1. The Petitioner is further advised that failure to make timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal questions. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991). This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 17th day of March, 2006.

  
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BANA ROBERTS  
UNITED STATES MAGISTRATE JUDGE